

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KLAUS MELGAARD and SIMON M. WHITELEY

Appeal No. 2004-1897
Application No. 09/455,664

ON BRIEF

MAILED

SEP 30 2004

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Before COHEN, FRANKFORT, and STAAB, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 2 through 6, 9 through 11, and 15. Claim 13 stands allowed. These claims constitute all of the claims remaining in the application.

Appellants' invention pertains to a filter for use in a water heating vessel for removing sedimentary material. A basic understanding of the invention can be derived from a reading of exemplary claim 15, a copy of which is attached to the main brief filed December 12, 2003.

Appeal No. 2004-1897
Application No. 09/455,664

As evidence of anticipation and obviousness, the examiner has applied the documents listed below:

Martindale	866,796	Sep. 24, 1907
O'Flynn et al.	6,383,381	May 7, 2002
(O'Flynn)		(filed Oct. 20, 1999)

The following rejections are before us for review.

Claims 15, 2 through 4, 6, and 9 through 11 stand rejected under 35 U.S.C. § 102(e) as being anticipated by O'Flynn.

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over O'Flynn in view of Martindale.

The full text of the examiner's rejections and response to the argument presented by appellants appears in the final rejection mailed March 31, 2003 and the answer mailed March 4, 2004, while the complete statement of appellants' argument can be found in the main brief filed December 12, 2003 and the reply brief filed April 14, 2004.

Appeal No. 2004-1897
Application No. 09/455,664

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the Board has carefully considered appellants' specification¹ and claims, the applied teachings,² and the respective viewpoints of appellants and the examiner. As a consequence of our review, we make the determinations which follow.

¹ As is evident from appellants' disclosure (specification, pages 1 and 2), prior to the present invention it was known in the art to position a filter (plastic frame having windows covered by fine filter mesh) and a scale collector (a body of stainless steel wire or mesh compacted into the form of a small ball-like block) in a water kettle. The examiner, infra, relies upon the teaching of O'Flynn alone as anticipatory of independent claim 15 (a scale collector coupled to the frame of a filter).

² In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the Board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

Anticipation

We do not sustain the rejection of claims 15, 2 through 4, 6, and 9 through 11 under 35 U.S.C. § 102(e) as being anticipated by O'Flynn.

Anticipation is established only when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). However, the law of anticipation does not require that the reference teach specifically what an appellant has disclosed and is claiming but only that the claims on appeal "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Claim 15, the sole independent claim on appeal, sets forth a filter that comprises, inter alia, a first mesh material provided

Appeal No. 2004-1897
Application No. 09/455,664

with a frame and a scale collector coupled to the frame, with the scale collector comprising a block of compressed mesh material different from the first mesh material.

The relevant patent to O'Flynn teaches a filter plate (Figs. 6 through 7) with polyester mesh filter material having a mesh count of 120 openings per square inch covering apertures 34 (column 2, lines 51 through 61). Further, this patent teaches a water treatment cartridge mounted on the filter plate and having a compartment 42 for holding a quantity of water treatment media to help remove color, odor, and bad taste from water (activated carbon or ion exchange resin) and mesh covered apertures 49 which operate to hold the water treatment media within the compartment 42 while at the same time allowing water to flow through the compartment.

We do not share the examiner's view (final rejection, page 3 and answer, page 5) that the mesh (only depicted, and not verbally described) covering the apertures 49 in the water treatment cartridge of O'Flynn is a scale collector comprising a block of compressed mesh material different from the first mesh material covering apertures 34, as now claimed. As indicated,

the mesh of the cartridge is not verbally described by the patentee. Thus, from a visual review of the drawings, it appears that, at best, the mesh covering apertures 49 may be the same type of mesh that covers the apertures 34 in the filter plate, i.e., a polyester mesh of some undisclosed form. Additionally, and quite importantly, it is our view that the vaguely disclosed mesh covering the apertures 49 cannot fairly be discerned as a "scale collector comprising a block of compressed mesh material," as claimed.³ Since, as explained above, claim 15 on appeal does not read on the filter of O'Flynn, the anticipation rejection of appellants' claims cannot be sustained.

³ A reading of appellants' underlying specification (page 2) informs this panel of the Board that the "block of compressed mesh material" (claim 5) is clearly comparable to the earlier mentioned and known "body of stainless steel wire or mesh compacted into the form of a small ball-like block." Additionally, it is quite apparent to us that one skilled in the art at issue would not comprehend the vaguely disclosed mesh covering the apertures 49 of O'Flynn as a block of compressed (compacted) mesh material.

Obviousness⁴

We do not sustain the rejection of claim 5 under 35 U.S.C. § 103(a) as being unpatentable over O'Flynn in view of Martindale.

The patent to Martindale teaches a strainer for teapots (Figs. 1 and 2). The strainer 10 (Fig. 4) is formed of a single piece of wire-fabric, e.g., perforated metal, and is housed in a strainer supporting frame (preferably stamped from a single piece of metal), which frame is depicted in Fig. 3. A collective assessment of the O'Flynn and Martindale disclosures reveals to us that they would not have been suggestive of the now claimed invention. In particular, this panel of the Board readily perceives that the Martindale teaching does not overcome the noted deficiency of the O'Flynn patent, i.e., Martindale would not have been suggestive of a scale collector comprising a block of compressed mesh material.

⁴ The test for obviousness is what the combined teachings of references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

Appeal No. 2004-1897
Application No. 09/455,664

Thus, the rejection of claim 5 cannot be sustained.

In summary, this panel of the Board has not sustained any of the rejections on appeal.

The decision of the examiner is reversed.

REVERSED


IRWIN CHARLES COHEN)
Administrative Patent Judge)
CHARLES E. FRANKFORT)

Administrative Patent Judge)
LAWRENCE J. STAAB)
Administrative Patent Judge)
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Appeal No. 2004-1897
Application No. 09/455,664

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